

## E. MANUAL ROAMING

72. *Background.* The *Reexamination NPRM* sought current information about the continued utility of the manual roaming rule.<sup>177</sup> The *Reexamination NPRM* explained that the Commission was aware of at least two ways to conduct manual roaming. In its simplest form, a host system uses information from the roaming mobile unit during a call setup to determine whether the unit is a subscriber in the market and, if not, routes the call to a third party for operator assistance, payment arrangements, and completion of the call. In a more complex form, the host system uses the information to identify the unit's home carrier and determine whether that carrier has a roaming agreement in place with the host carrier. If no agreement exists, the host carrier routes the call to a third party to complete the steps needed for call completion as described above. In either case, roaming can occur only if the unit is technologically compatible with the host system.<sup>178</sup> The *Reexamination NPRM* sought comment on how often subscribers avail themselves of manual roaming in either of its two forms or other forms, if available. In light of both the evolution of the CMRS market and advancements in CMRS technologies, the *Reexamination NPRM* asked to what extent manual roaming had fallen into disuse or been replaced by automatic roaming and asked whether any manual roaming requirement that we retain in this proceeding should be subject to a sunset provision and, if so, when such a sunset should occur.<sup>179</sup> The *Reexamination NPRM* also sought comment on whether "the manual roaming rule should be kept to as a fallback for consumers when automatic roaming is unavailable."<sup>180</sup>

73. The Commission received comments with diverging views on this issue. Many commenters oppose retention of the manual roaming rule for differing reasons.<sup>181</sup> Some carriers who oppose adoption of an automatic roaming rule also oppose retention of manual roaming. They contend that the availability of roaming services is so widespread there is no need for a roaming requirement of any kind.<sup>182</sup> There are other commenters, however, who support adoption of an automatic roaming rule but oppose retention of the manual roaming rule, contending that manual roaming is insufficient to satisfy the needs of the consumers who expect seamless wireless service wherever they may go.<sup>183</sup> Other commenters argue that there is still a need for the manual roaming requirement for those situations in which a carrier cannot provide its subscribers with automatic roaming services in a certain geographic area, either because it has been unable to reach an agreement with the host carrier or because of technical issues with its own network.<sup>184</sup> Verisign, a provider of manual "roaming solutions," requests retention of the manual roaming

(Continued from previous page)

(In any section 208 complaint proceeding, Commission staff may exercise its discretion to require a defendant carrier to present relevant information).

<sup>177</sup> See *Reexamination NPRM*, 20 FCC Rcd at 15056 ¶ 22.

<sup>178</sup> See *id.*

<sup>179</sup> *Reexamination NPRM*, 20 FCC Rcd at 15056 ¶¶ 23-24.

<sup>180</sup> *Reexamination NPRM*, 20 FCC Rcd at 15056 ¶ 23.

<sup>181</sup> See, e.g., Verizon Wireless Comments at 2; Cingular Comments at 16; T-Mobile Comments at 12.

<sup>182</sup> Verizon Wireless Comments at 2; Cingular Comments at 16; T-Mobile Comments at 12. Sprint claims that automatic roaming has become so prevalent that it does not address manual roaming issues. Sprint Comments at 2 n.4; Sprint Reply Comments at 1 n.1.

<sup>183</sup> Leap Wireless Comments at 5; RTG and OPASTCO Joint Reply Comments at 9; SouthernLINC Comments at 32; USCC Comments at 7-10.

<sup>184</sup> See MetroPCS Comments at 3 (asserting the difficulty that MetroPCS has had in entering into automatic roaming agreements); *id.* at 20 (explaining that manual roaming is still necessary when an automatic roaming services agreement is not unavailable); Unicom Reply Comments at 2 (stating that Unicom is still in the process of (continued....))

rule based on continuing need.<sup>185</sup>

74. *Discussion.* We decline to sunset our existing manual roaming rule and, instead, retain it as a safety net for consumers.<sup>186</sup> We are aware that as automatic roaming becomes increasingly ubiquitous, it will render the need for manual roaming obsolete. We note, however, that the record demonstrates that automatic roaming is not available in certain instances today and, therefore, the continuing utility of our manual roaming rule in the immediate future is not completely obviated. For this reason, we will not sunset our manual roaming rule at this time.

75. Commenters, including those both for and against the adoption of an automatic roaming rule, have indicated that there could be geographic areas where carriers are not providing their customers with automatic roaming services because they have not yet entered into an automatic roaming services agreement with a host carrier that provides service in that area.<sup>187</sup> Further, the record establishes that consumers still seek manual roaming services. Verisign, for example, asserts that at least 18,000 manual roaming calls are completed each month and that consumers attempt to make 800,000 manual roaming calls per month.<sup>188</sup> Some carriers, such as Unicom, still rely on manual roaming for analog service and ask that manual roaming be continued until it has completed the process of replacing its old analog equipment.<sup>189</sup> MetroPCS argues that retention of the manual roaming rule is necessary to provide a safety net in circumstances where an automatic roaming agreement is not in place.<sup>190</sup>

76. Therefore, we retain the manual roaming rule as a safety net to ensure that subscribers can initiate a wireless call when they are outside of their service area through manual roaming if there is no automatic roaming agreement in place. As we have previously stated, consumers have come to expect seamless wireless service wherever they travel within the United States and, ultimately, this will be achieved through automatic roaming.<sup>191</sup> We find that our codification of automatic roaming obligations, in conjunction with our determination that automatic roaming is a common carrier service, serves the public interest by enabling subscribers to seamlessly roam and, over time, the provision of automatic roaming will diminish the need for manual roaming.

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transitioning its network from analog, which does not permit automatic roaming, to digital services), 9; Verisign Comments at 2-3 (asserting that consumers still make manual roaming calls).

<sup>185</sup> Verisign Comments at 2-3.

<sup>186</sup> We note that the scope of our existing manual roaming rule is limited to certain CMRS providers. However, as the Commission previously stated, “[a]llegations that particular practices by non-covered CMRS providers [*i.e.*, those not covered by the extended manual roaming rule] are unjust, unreasonable or otherwise in violation of the Communications Act would be grounds for complaint under Section 208 of that Act.” *Interconnection and Resale Obligations Second Report and Order*, 11 FCC Rcd at 9471 ¶ 14.

<sup>187</sup> See Metro PCS Comments at 20 (stating that manual roaming should remain in place as a “safety net” for customers whose CMRS providers have not obtained an automatic roaming services agreement). NTCH Comments at 3-4 (explaining that it NTCH was not able to enter into a roaming agreement with another CDMA carrier until the Commission initiated the *Reexamination NPRM*); USCC Reply Comments at 9-10 (describing difficulties USCC has in entering into roaming agreements with Cingular, Sprint, and Nextel Partners); Sprint Comments at 17-18 (arguing that Sprint has no duty to enter into an agreement with a competitor). Cingular Reply Comments at 18 (arguing that Cingular cannot enter into roaming agreements with some carriers who have failed to upgrade their networks).

<sup>188</sup> Verisign Comments at 2.

<sup>189</sup> See Unicom Reply Comments at 2.

<sup>190</sup> See MetroPCS Comments at 20.

<sup>191</sup> See *supra* ¶ 27.

#### IV. FURTHER NOTICE OF PROPOSED RULEMAKING

77. In the Report and Order, we extend the automatic roaming requirement only to services offered by CMRS carriers that are real-time, two-way switched voice or data services that are interconnected with the public switched network, and to push-to-talk and text messaging.<sup>192</sup> In this Further Notice of Proposed Rulemaking, we seek comment on whether we should extend the automatic roaming obligation to non-interconnected services or features, including services that have been classified as information services, such as wireless broadband Internet access service, or other non-CMRS services offered by CMRS carriers. Further, we seek comment on the implications of extending the automatic roaming obligation in this manner.

78. A number of parties argue that all mobile data services should be included as part of an automatic roaming obligation because demand for mobile data services is growing and its inclusion advances “ubiquitous access to mobile services.”<sup>193</sup> They argue that the market for data services is enormous and growing; data services have become indispensable business tools;<sup>194</sup> and data services provide critical back-up in times of emergency; and data services are essential tools for accessibility to certain segments of the population, such as the hearing-impaired community.<sup>195</sup> Other parties oppose adoption of an automatic roaming rule, as well as any extension of that rule to non-interconnected data services provided over enhanced digital networks.<sup>196</sup> They argue that mandating automatic roaming access to the non-interconnected features of a competitor’s network might undercut incentives to differentiate products and could chill innovation.<sup>197</sup> They also argue that such a requirement could discourage build out of facilities for facilities-based competition and reduce the incentives to access the spectrum through other means such as initial spectrum licensing or secondary markets.<sup>198</sup>

79. We seek comment on whether we should extend automatic roaming obligations to non-interconnected services and features, including information services, and on the legal and policy basis for doing so. As noted previously, allowing competitors in a marketplace to gain competitive advantage from their own innovations results in value to subscribers – in terms of new service offerings and features. To

<sup>192</sup> See *supra* ¶¶ 2, 53-61.

<sup>193</sup> See SouthernLINC Comments at 13, 18, 48-49; SouthernLINC Reply Comments at 7, 41; AIRPEAK/Airtel Joint Comments at 7. See also Carrier Group Joint Letter *Ex Parte*, July 18, 2007 at 1-2. (The Joint Letter was filed by the following 26 carriers and carrier organizations: Southern Communications Services, Leap Wireless International, United States Cellular Corporation, Cellular South, Rural Cellular Association, Rural Telecommunications Group, National Telecommunications Cooperative Association, NTCH, Comcast Corp., Aloha Partners, Farmers Mutual Cooperative Telephone Company, Wireless Communications Venture, Copper Valley Wireless, Golden West Telecommunications Cooperative, Prairie Wave Communications, Clinton County Telephone, Roberts County Telephone Cooperative Association and RC Communications, McCook Cooperative Telephone Company and Tri-County Telecom, Fisher Wireless Services, AIRTEL Wireless, Coral Wireless, California RSA No. 3 Limited Partnership D/B/A Golden State Cellular, Matanuska Telephone Association, James Valley Cooperative Telephone Company, Oregon Farmers Mutual Telephone Co., Public Service Communications).

<sup>194</sup> See Carrier Group Joint *Ex Parte*, July 18, 2007 at 2.

<sup>195</sup> See, e.g., SouthernLINC *Ex Parte*, July 2 at 2-3.

<sup>196</sup> See ALLTEL Reply Comments at 8; Cingular Reply Comments at 3 & n.8; EDGE Reply Comments at 8-9; Nextel Partners Comments at 12; Sprint Reply Comments at 19-20; T-Mobile Comments at 16; T-Mobile Reply Comments at 14; Verizon Wireless Comments at 22; Verizon Wireless Reply Comments at 24-25.

<sup>197</sup> See, e.g., Verizon Wireless Comments at 22; Verizon Wireless Reply Comments at 24-25.

<sup>198</sup> See, e.g., EDGE Reply Comments at 9 (arguing that forced roaming would thwart market forces by benefiting only those providers that have opted to invest less on their system); NDNC Comments at 3 (arguing against automating roaming rules because they create a disincentive for companies to further develop their networks).

what extent, if any, would requiring roaming access to non-interconnected services and features undermine carriers' incentive to innovate, or to invest in mobile wireless broadband network facilities? Would the potential for undermining innovation be mitigated by conditioning roaming access to non-interconnected services and features, as we have, for example, with push-to-talk and SMS? Namely, should we require that the requesting carrier offer the requested service or feature to its subscribers on its own home network; that roaming must be technically feasible; and any changes to the would-be host carrier's network that are necessary to accommodate roaming requests extending to these services and features must be economically reasonable?

80. If the Commission were to extend automatic roaming obligations to non-interconnected services and features, are there any special issues (technical, economic, or otherwise) associated with roaming among data networks that may not exist when roaming among CMRS carriers' interconnected voice networks? For example, are there any issues regarding network capacity, network integrity, or network security? We seek comment on the effect that automatic roaming would have on the capacity of data networks and the ability of carriers to offer full access to their own customers. We would be concerned if requiring a carrier to offer roaming service on its data network to the customers of other carriers resulted in the carrier facing capacity constraints that adversely affect its own customers. We therefore ask whether a carrier should have the right to limit access to its network by roamers, and what parameters should be considered as justification for such limits. We invite commenters to suggest specific standards for determining when the requirement should or should not apply.

81. If the Commission were to extend automatic roaming obligations to non-interconnected services and features, should all such services and features be included? Are there any public interest reasons to treat narrowband and broadband data services differently in the context of automatic roaming?<sup>199</sup> In the *Wireless Broadband Classification Order*,<sup>200</sup> we determined that mobile wireless broadband Internet access service is an information service, and that it is not CMRS. If we were to impose an automatic roaming obligation on mobile wireless broadband Internet access services, how could we do so in accordance with the determinations in that order? For example, could we base the requirement on Title I ancillary jurisdiction, or on the Title III regulation of radio services? Or should we restrict the automatic roaming mandate only to non-interconnected data services that are not classified as information services? We note that while a few CMRS providers have requested that the Commission require automatic roaming for all services, including non-interconnected data services provided over enhanced digital networks,<sup>201</sup> other CMRS providers, including several small carriers, are against imposing automatic roaming rules for enhanced data services, arguing that forced roaming would thwart

<sup>199</sup> We note that in the *Wireless Broadband Internet Access Declaratory Ruling*, the Commission stated that the item did not implicate narrowband data services (e.g., one-way paging) and defined the line between broadband and narrowband consistent with the Commission's definition in other contexts (i.e., services with over 200 kbps capability in at least one direction). See *Appropriate Regulatory Treatment for Broadband Access to the Internet over Wireless Networks, Declaratory Ruling*, 22 FCC Rcd 5901, 5909, n. 55 (2007) (*Wireless Broadband Internet Access Declaratory Ruling*). See also e.g., *Wireline Broadband Internet Access Services Order*, 20 FCC Rcd at 14860 n.15; In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, CC Docket No. 98-146, *Second Report*, 15 FCC Rcd 20913, 20919-20 (2000) (*Second 706 Report*) (defining the term "high speed" to mean infrastructure capable of delivering a speed in excess of 200 kbps in at least one direction). Although this definition remains in effect today, the Commission may examine and modify it for future purposes. Cf. *Wireline Broadband Internet Access Services Order*, 20 FCC Rcd at 14860 n.15.

<sup>200</sup> See generally, *Wireless Broadband Internet Access Declaratory Ruling*, 22 FCC Rcd 5901.

<sup>201</sup> See ACS Comments at 6; MetroPCS Comments at 25 n.58.

market forces by benefiting only those providers that have opted to invest less in their systems.<sup>202</sup> Given these contradictory positions, what is the appropriate balance to be drawn between providing seamless service accessibility to end-users, and allowing service providers to gain competitive advantages from their investments and innovations?

## V. PROCEDURAL MATTERS

### A. Final Regulatory Flexibility Analysis

82. A Final Regulatory Flexibility Analysis has been prepared for the Report and Order and is included in Appendix C.

### B. Initial Regulatory Flexibility Analysis

83. An Initial Regulatory Flexibility Analysis has been prepared for the Further Notice of Proposed Rulemaking and is included in Appendix D.

### C. Ex Parte Presentations

84. The rulemaking shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>203</sup> Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required.<sup>204</sup> Other requirements pertaining to oral and written presentations are set forth in Section 1.1206(b) of the Commission's rules.<sup>205</sup>

### D. Comment Filing Procedures

85. Pursuant to Sections 1.415 and 1.419 of the Commission's rules,<sup>206</sup> interested parties may file comments on or before 60 days after publication of the Further Notice of Proposed Rulemaking in the Federal Register and reply comments regarding the Further Notice of Proposed Rulemaking may be filed on or before 90 days after publication of the Further Notice of Proposed Rulemaking in the Federal Register. All filings related to this Further Notice of Rulemaking should refer to WT Docket No. 05-265. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.<sup>207</sup>

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.

- ECFS filers must transmit one electronic copy of the comments for WT Docket No. 05-265. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and WT Docket No. 05-265. Parties may also submit an

<sup>202</sup> See e.g., EDGE Reply Comments at 1, 8-9; see also, NDNC Comments at 3 (arguing against automating roaming rules because they create a disincentive for companies to further develop their networks).

<sup>203</sup> 47 C.F.R. §§ 1.200 *et. seq.*

<sup>204</sup> See 47 C.F.R. § 1.1206(b)(2).

<sup>205</sup> 47 C.F.R. § 1.1206(b).

<sup>206</sup> 47 C.F.R. §§ 1.415, 1.419.

<sup>207</sup> See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov) and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington, DC, 20554.
  - The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
  - U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12<sup>th</sup> Street, S.W., Washington DC 20554.

86. Parties should send a copy of their filings to: Christina Clearwater, Wireless Telecommunications Bureau, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554, or by e-mail to [christina.clearwater@fcc.gov](mailto:christina.clearwater@fcc.gov) and Won Kim, Wireless Telecommunications Bureau, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554, or by e-mail to [won.kim@fcc.gov](mailto:won.kim@fcc.gov). Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, Room CY-B402, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554, (202) 488-5300, or via e-mail to [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com).

87. Documents in WT Docket No. 05-265 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, Room CY-A257, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com).

88. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CARTS, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov); phone: 202-418-0530 (voice), 202-418-0432 (TTY).

#### **E. Paperwork Reduction Act**

89. This document does not contain an information collection subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. Therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.<sup>208</sup>

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<sup>208</sup> See 44 U.S.C. 3506(c)(4).

**F. Congressional Review Act**

90. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.<sup>209</sup>

**G. Contact Persons**

91. For further information concerning this rulemaking proceeding, please contact Christina Clearwater, Spectrum and Competition Policy Division at 202-418-1893, Won Kim, Spectrum and Competition Policy Division at 202-418-1368, or Heidi Kroll, Spectrum and Competition Policy Division at 202-418-2361.

**VI. ORDERING CLAUSES**

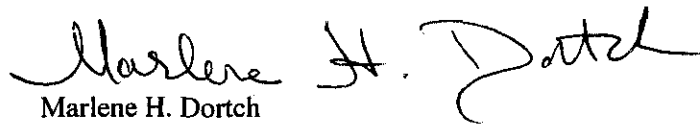
92. Accordingly, IT IS ORDERED THAT, pursuant to the authority contained in Sections 1, 4(i), 201, 202, 251(a), 253, 303(r), and 332(c)(1)(B) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201, 202, 251(a), 253, 303(r), and 332(c)(1)(B), and Section 1.425 of the Commission's rules, 47 C.F.R. § 1.425, this Report and Order and Further Notice of Rulemaking IS HEREBY ADOPTED.

93. IT IS FURTHER ORDERED THAT Sections 20.3 and 20.12 of the Commission's rules ARE AMENDED as specified in Appendix A, and such rule amendments shall be effective 60 days after the date of publication of the text thereof in the Federal Register.

94. IT IS FURTHER ORDERED THAT the Joint Petition for Commission Inquiry Pursuant to Section 403 of the Communications Act filed by AIRPEAK Communications, LLC, Airtel Wireless LLC, Cleveland Unlimited, Inc., Leap Wireless International, Inc., MetroPCS Communications, Inc., Punxsutawney Communications, Rural Telecommunications Group, Inc., and Southern Communications Services, Inc. d/b/a SouthernLINC Wireless, on April 25, 2006 IS HEREBY DENIED.

95. IT IS FURTHER ORDERED THAT the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order and the Further Notice of Proposed Rulemaking, including the Final Regulatory Flexibility Analysis and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch  
Secretary

<sup>209</sup> See 5 U.S.C. 801(a)(1)(A).

## APPENDIX A

## Final Rules

1. The authority citation for Part 20 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 160, 251-254, 303 and 332 unless otherwise noted.

2. Section 20.3 is amended by adding the following terms in their alphabetically correct locations.

**§ 20.3 Definitions.**

\* \* \* \* \*

*Automatic Roaming.* With automatic roaming, under a pre-existing contractual agreement between a subscriber's home carrier and a host carrier, a roaming subscriber is able to originate or terminate a call in the host carrier's service area without taking any special actions.

\* \* \* \* \*

*Home Carrier.* For automatic roaming, a home carrier is the facilities-based CMRS carrier with which a subscriber has a direct contractual relationship. A home carrier may request automatic roaming service from a host carrier on behalf of its subscribers.

\* \* \* \* \*

*Home Market.* For automatic roaming, a CMRS carrier's home market is defined as any geographic location where the home carrier has a wireless license or spectrum usage rights that could be used to provide CMRS.

\* \* \* \* \*

*Host Carrier.* For automatic roaming, the host carrier is a facilities-based CMRS carrier on whose system a subscriber roams when outside its home carrier's home market.

\* \* \* \* \*

*Manual Roaming.* With manual roaming, a subscriber must establish a relationship with the host carrier on whose system he or she wants to roam in order to make a call. Typically, the roaming subscriber accomplishes this in the course of attempting to originate a call by giving a valid credit card number to the carrier providing the roaming service.

\* \* \* \* \*

3. Section 20.12 is amended by revising paragraphs (a) and (c) and adding paragraph (d) as follows:

**§ 20.12 Resale and roaming.**

(a)(1) *Scope of Manual Roaming and Resale.* Paragraph (c) of this section is applicable to providers of Broadband Personal Communications Services (part 24, subpart E of this chapter), Cellular Radio Telephone Service (part 22, subpart H of this chapter), and specialized Mobile Radio Services in the 800 MHz and 900 MHz bands (included in part 90, subpart S of this chapter) if such providers offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilizes an in-network switching facility that enables the provider to re-use frequencies and accomplish seamless hand-offs of subscriber calls. The scope of paragraph (b) of this section, concerning the resale rule, is further limited so as to exclude from the requirements of that paragraph those Broadband Personal Communications Services C, D, E, and F block licensees that do not own and control and are not owned and controlled by firms also holding cellular A or B block licenses.



(2) *Scope of Automatic Roaming.* Paragraph (d) of this section is applicable to CMRS carriers if such carriers offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilizes an in-network switching facility that enables the carrier to re-use frequencies and accomplish seamless hand-offs of subscriber calls. Paragraph (d) of this section is also applicable to the provision of push-to-talk and text-messaging service by CMRS carriers.

\* \* \* \* \*

(c) *Manual Roaming.* Each carrier subject to paragraph (a)(1) of this section must provide mobile radio service upon request to all subscribers in good standing to the services of any carrier subject to paragraph (a)(1) of this section, including roamers, while such subscribers are located within any portion of the licensee's licensed service area where facilities have been constructed and service to subscribers has commenced, if such subscribers are using mobile equipment that is technically compatible with the licensee's base stations.

(d) *Automatic Roaming.* Upon a reasonable request, it shall be the duty of each host carrier subject to paragraph (a)(2) of this section to provide automatic roaming to any technologically compatible home carrier, outside of the requesting home carrier's home market, on reasonable and nondiscriminatory terms and conditions.

**APPENDIX B****List of Commenters****Comments**

ACS Wireless, Inc. (ACS)  
AIRPEAK Communications, LLC (AIRPEAK)  
Airtel Wireless, LLC (Airtel)  
Centennial Communications Corp. (Centennial)  
Cingular Wireless (Cingular)  
Leap Wireless International, Inc. (Leap)  
MetroPCS Communications, Inc. (MetroPCS)  
National Telecommunications Cooperative Association (NTCA)  
Nextel Partners, Inc. (Nextel Partners)  
North Dakota Network Co. (NDNC)  
NTCH, Inc. (NTCH)  
NY3G Partnership (NY3G)  
Organization for the Promotion Advancement of Small Telecommunications Companies (RTG/OPASTCO)  
Rural Cellular Association (RCA)  
Rural Telecommunications Group, Inc.  
Safety and Frequency Equity Competition Coalition (SAFE)  
SouthernLINC Wireless (SouthernLINC)  
Sprint Nextel  
T-Mobile USA, Inc. (T-Mobile)  
United States Cellular Corp. (USCC)  
Verisign, Inc. (Verisign)  
Verizon Wireless  
William Powers

**Reply Comments**

AIRPEAK  
Airtel  
Alaska Native Broadband 1 License, LLC (ANB)  
Alltel Corporation (Alltel)  
Centennial  
Cingular  
Cleveland Unlimited, Inc. (CUI)  
Commnet Wireless, LLC. (Commnet)  
Edge Wireless, LLC (Edge)  
John Staurulakis, Inc.  
Leap  
MetroPCS  
Nextel Partners  
NTCH  
OPASTCO  
Punxsutawney Communications, LLC (Punxsutawney)  
RTG  
SLO Cellular, Inc. (SLO)  
SouthernLINC  
Sprint Nextel

SunCom Wireless, Inc. (SunCom)  
T-Mobile  
Unicom, Inc. (Unicom)  
USCC  
Verizon Wireless  
Wireless Communications Association International, Inc. (WCA)

**Joint Section 403 Petition Commenters**

**Joint Petition: April 25, 2006**

AIRPEAK  
Airtel  
Cleveland  
Leap  
MetroPCS  
Punxsutawney  
RTG  
SouthernLINC

**Oppositions: May 5, 2006**

Cingular  
Sprint/Nextel  
Verizon Wireless

**Reply: May 12, 2006**

AIRPEAK  
Airtel  
Cleveland  
Leap  
MetroPCS  
Punxsutawney  
RTG  
SouthernLINC

## APPENDIX C

## Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM* in WT Docket No. 05-265.<sup>2</sup> The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>3</sup>

**A. Need for, and Objectives of, the Report and Order**

2. In the *Report and Order*, with regard to commercial services, the Commission takes an affirmative step to facilitate the provision of wireless services to consumers, especially those in rural areas, and to clarify our rules related to the roaming. The Commission clarifies that automatic roaming is a common carrier obligation for CMRS carriers, requiring them to provide roaming services to other carriers upon reasonable request and on a just, reasonable, and non-discriminatory basis pursuant to Sections 201 and 202 of the Communications Act. The Commission reiterates its earlier determination that roaming is a common carrier service because roaming capability gives end users access to a foreign network in order to communicate messages of their own choosing. Thus, the provision of roaming is subject to the requirements of Section 201, 202, and 208 of the Communications Act.<sup>4</sup>

3. The Commission also finds that the common carrier obligation to provide roaming extends to services that are real-time, two-way switched voice or data service that are interconnected with the public switched network and utilize an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. The Commission notes that roaming, as a common carrier obligation, does not extend to services that are classified as information services or to services that are not CMRS.<sup>5</sup>

4. The Commission recognizes that today CMRS consumers increasingly rely on mobile telephony services and they reasonably expect to continue their wireless communications even when they are out of their home network area. Thus, the findings in this *Report and Order* with respect to CMRS providers' obligations regarding roaming services serve the public interest and safeguard wireless consumers' reasonable expectations of seamless continuous nationwide commercial mobile telephony services through roaming. The Commission also declines to sunset the existing manual roaming

<sup>1</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> See In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services, *Memorandum Opinion & Order and Notice of Proposed Rulemaking*, WT Docket No. 05-265, 20 FCC Rcd 15047, 15068 App. (2005) ("MO&O" and "NPRM," respectively).

<sup>3</sup> See 5 U.S.C. § 604.

<sup>4</sup> See Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services, WT Docket No. 05-265, *Memorandum Opinion & Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 15047, 15048 ¶ 2 (2005) ("Reexamination NPRM"); Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, *Second Report and Order and Third Notice of Proposed Rulemaking*, 11 FCC Rcd 9462, 9463-71 ¶¶ 1-14 (1996) ("Interconnection and Resale Obligations Second Report and Order" and "Interconnection and Resale Obligations Third NPRM," respectively). See also 47 C.F.R. § 20.15. Section 332(c)(1) of the Act provides that a person engaged in the provision of a service that is a commercial mobile service shall be treated as a common carrier for purposes of the Act. See 47 U.S.C. § 332(c)(1).

<sup>5</sup> Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks, *Declaratory Ruling*, FCC No. 07-30, ¶¶ 11-12 (rel. Mar. 23, 2007) ("Wireless Broadband Internet Access Declaratory Ruling").

requirement at this time to provide additional flexibility for consumers.

**B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

5. There were no comments filed specifically in response to the IRFA.

**C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply**

6. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted.<sup>6</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>7</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>8</sup> A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>9</sup>

7. In the following paragraphs, the Commission further describes and estimates the number of small entity licensees that may be affected by the rules the Commission adopts in this *Report and Order*. The Commission's finding that automatic roaming is a common carrier service subject to protections outlined in sections 201, 202 and 208 of the Act affects all CMRS carriers that provide real-time, two-way switched voice or data service that are interconnected with the public switched network and utilize an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. Such carriers are obligated to provide automatic roaming. As a common carrier obligation, the automatic roaming rule does not extend to non-interconnected services/features or services that are classified as information services or to services that are not CMRS.

8. Since this *Report and Order* applies to multiple services, this FRFA analyzes the number of small entities affected on a service-by-service basis. When identifying small entities that could be affected by the Commission's new rules, this FRFA provides information that describes auctions results, including the number of small entities that were winning bidders. However, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily reflect the total number of small entities currently in a particular service. The Commission does not generally require that licensees later provide business size information, except in the context of an assignment or a transfer of control application that involves unjust enrichment issues.

9. *Wireless Service Providers*. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging"<sup>10</sup> and "Cellular and Other Wireless Telecommunications."<sup>11</sup> Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show

<sup>6</sup> 5 U.S.C. § 604(a)(3).

<sup>7</sup> 5 U.S.C. § 601(6).

<sup>8</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

<sup>9</sup> 15 U.S.C. § 632.

<sup>10</sup> 13 C.F.R. § 121.201, NAICS code 517211.

<sup>11</sup> 13 C.F.R. § 121.201, NAICS code 517212.

that there were 807 firms in this category that operated for the entire year.<sup>12</sup> Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.<sup>13</sup> Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.<sup>14</sup> Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.<sup>15</sup> Thus, under this second category and size standard, the majority of firms can, again, be considered small.

10. *Cellular Licensees.* The SBA has developed a small business size standard for small businesses in the category "Cellular and Other Wireless Telecommunications."<sup>16</sup> Under that SBA category, a business is small if it has 1,500 or fewer employees.<sup>17</sup> For the census category of "Cellular and Other Wireless Telecommunications," Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.<sup>18</sup> Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.<sup>19</sup> Thus, under this category and size standard, the majority of firms can be considered small.

11. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.<sup>20</sup> For Block F, an additional small business size standard for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>21</sup> These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.<sup>22</sup> No small businesses within the

<sup>12</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517211 (issued Nov. 2005).

<sup>13</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

<sup>14</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517212 (issued Nov. 2005).

<sup>15</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

<sup>16</sup> 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517212.

<sup>17</sup> *Id.*

<sup>18</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517212 (issued Nov. 2005).

<sup>19</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

<sup>20</sup> See Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7850-7852 ¶¶ 57-60 (1996); see also 47 C.F.R. § 24.720(b).

<sup>21</sup> See Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7852 ¶ 60.

<sup>22</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the C Block auctions. A total of 93 "small" and "very small" business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.<sup>23</sup> On March 23, 1999, the Commission reaucted 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.<sup>24</sup> On January 26, 2001, the Commission completed the auction of 422 C and F PCS licenses in Auction 35.<sup>25</sup> Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

12. *Narrowband Personal Communications Service.* The Commission held an auction for Narrowband Personal Communications Service (PCS) licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, "small businesses" were entities with average gross revenues for the prior three calendar years of \$40 million or less.<sup>26</sup> Through these auctions, the Commission awarded a total of forty-one licenses, 11 of which were obtained by four small businesses.<sup>27</sup> To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*.<sup>28</sup> A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million.<sup>29</sup> A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million.<sup>30</sup> The SBA has approved these small business size standards.<sup>31</sup> A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (MTA and nationwide) licenses.<sup>32</sup> Three of these claimed status as a small or very small entity and won 311 licenses.

13. *Specialized Mobile Radio.* The Commission awards "small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to

<sup>23</sup> FCC News, "Broadband PCS, D, E and F Block Auction Closes," No. 71744 (rel. January 14, 1997).

<sup>24</sup> See "C, D, E, and F Block Broadband PCS Auction Closes," *Public Notice*, 14 FCC Rcd 6688 (WTB 1999).

<sup>25</sup> See "C and F Block Broadband PCS Auction Closes; Winning Bidders Announced," *Public Notice*, 16 FCC Rcd 2339 (2001).

<sup>26</sup> Implementation of Section 309(j) of the Communications Act – Competitive Bidding Narrowband PCS, *Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 10 FCC Rcd 175, 196 ¶ 46 (1994).

<sup>27</sup> See "Announcing the High Bidders in the Auction of ten Nationwide Narrowband PCS Licenses, Winning Bids Total \$617,006,674," *Public Notice*, PNWL 94-004 (rel. Aug. 2, 1994); "Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total \$490,901,787," *Public Notice*, PNWL 94-27 (rel. Nov. 9, 1994).

<sup>28</sup> Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, *Second Report and Order and Second Further Notice of Proposed Rule Making*, 15 FCC Rcd 10456, 10476 ¶ 40 (2000).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

<sup>32</sup> See "Narrowband PCS Auction Closes," *Public Notice*, 16 FCC Rcd 18663 (WTB 2001).

firms that had revenues of no more than \$15 million in each of the three previous calendar years.<sup>33</sup> The Commission awards "very small entity" bidding credits to firms that had revenues of no more than \$3 million in each of the three previous calendar years.<sup>34</sup> The SBA has approved these small business size standards for the 900 MHz Service.<sup>35</sup> The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.<sup>36</sup> A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.<sup>37</sup>

14. The auction of the 1,050 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed "small business" status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

15. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$3 million or \$15 million (the special small business size standards), or have no more than 1,500 employees (the generic SBA standard for wireless entities, discussed, *supra*). One firm has over \$15 million in revenues. The Commission assumes, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities.

16. *Advanced Wireless Services.* In the *AWS-I Report and Order*, the Commission adopted rules that affect applicants who wish to provide service in the 1710-1755 MHz and 2110-2155 MHz bands.<sup>38</sup> The *AWS-I Report and Order* defines a "small business" as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a "very small business" as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million. The *AWS-I Report and Order* also provides small businesses with a bidding credit of 15 percent and very small businesses with a bidding credit of 25 percent.

<sup>33</sup> 47 C.F.R. § 90.814(b)(1).

<sup>34</sup> *Id.*

<sup>35</sup> See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999.

<sup>36</sup> See "Correction to Public Notice DA 96-586 'FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,'" *Public Notice*, 18 FCC Rcd 18367 (WTB 1996).

<sup>37</sup> See "Multi-Radio Service Auction Closes," *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

<sup>38</sup> Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02-353, *Report and Order*, 18 FCC Rcd 25162 (2003) (*AWS-I Report and Order*).



17. Rural Radiotelephone Service. The Commission uses the SBA small business size standard applicable to cellular and other wireless telecommunication companies, *i.e.*, an entity employing no more than 1,500 persons.<sup>39</sup> There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

18. Wireless Communications Services. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses in the 2305-2320 MHz and 2345-2360 MHz bands. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of \$15 million for each of the three preceding years.<sup>40</sup> The SBA has approved these definitions.<sup>41</sup> The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

19. 220 MHz Radio Service – Phase I Licensees. The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz Band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications" companies. This category provides that a small business is a wireless company employing no more than 1,500 persons.<sup>42</sup> For the census category of "Cellular and Other Wireless Telecommunications," Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.<sup>43</sup> Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.<sup>44</sup> Thus, under this category and size standard, the majority of firms can be considered small.

20. 220 MHz Radio Service – Phase II Licensees. The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third Report and Order*, the Commission adopted a small business size standard for defining "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>45</sup> This small business standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding

<sup>39</sup> 13 C.F.R. § 121.201, NAICS code 517212.

<sup>40</sup> Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS), *Report and Order*, 12 FCC Rcd 10785, 10879 ¶ 194 (1997).

<sup>41</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

<sup>42</sup> 13 C.F.R. § 121.201, NAICS code 517212.

<sup>43</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517212 (issued Nov. 2005).

<sup>44</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

<sup>45</sup> Amendment of Part 90 of the Commission's Rules to Provide For the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, *Third Report and Order*, 12 FCC Rcd 10943, 11068-70 ¶¶ 291-295 (1997).

\$15 million for the preceding three years.<sup>46</sup> A “very small business” is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years.<sup>47</sup> The SBA has approved these small size standards.<sup>48</sup> Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.<sup>49</sup> In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.<sup>50</sup> Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.<sup>51</sup> A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.<sup>52</sup>

21. 700 MHz Guard Band Licenses. In the *700 MHz Guard Band Order*, the Commission adopted size standards for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>53</sup> A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.<sup>54</sup> Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.<sup>55</sup> SBA approval of these definitions is not required.<sup>56</sup> An auction of 52 Major Economic Area (MEA) licenses commenced on

<sup>46</sup> *Id.* at 11068 ¶ 291.

<sup>47</sup> *Id.*

<sup>48</sup> See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998.

<sup>49</sup> See generally “220 MHz Service Auction Closes,” *Public Notice*, 14 FCC Rcd 605 (WTB 1998).

<sup>50</sup> See “FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made,” *Public Notice*, 14 FCC Rcd 1085 (WTB 1999).

<sup>51</sup> See “Phase II 220 MHz Service Spectrum Auction Closes,” *Public Notice*, 14 FCC Rcd 11218 (WTB 1999).

<sup>52</sup> See “Multi-Radio Service Auction Closes,” *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

<sup>53</sup> Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, *Second Report and Order*, 15 FCC Rcd 5299 (2000). Service rules were amended in 2007, but no changes were made to small business size categories. See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03-264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules, WT Docket No. 06-169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 8064 (2007).

<sup>54</sup> *Id.* at 5343 ¶ 108.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* At 5343 ¶ 108 n.246 (for the 746-764 MHz and 776-704 MHz bands, the Commission is exempt from 15 U.S.C. § 632, which requires Federal agencies to obtain Small Business Administration approval before adopting small business size standards).

September 6, 2000, and closed on September 21, 2000.<sup>57</sup> Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.<sup>58</sup>

22. Upper 700 MHz Band Licenses. The Commission released a *Report and Order* authorizing service in the Upper 700 MHz band.<sup>59</sup> An auction for these licenses, previously scheduled for January 13, 2003, was postponed.<sup>60</sup>

23. Lower 700 MHz Band Licenses. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.<sup>61</sup> The Commission has defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.<sup>62</sup> A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.<sup>63</sup> Additionally, the Lower 700 MHz Band has a third category of small business status that may be claimed for Metropolitan/Rural Service Area (MSA/RSA) licenses. The third category is entrepreneur, which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.<sup>64</sup> The SBA has approved these small size standards.<sup>65</sup> An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on

<sup>57</sup> See "700 MHz Guard Bands Auction Closes: Winning Bidders Announced," *Public Notice*, 15 FCC Rcd 18026 (2000).

<sup>58</sup> See "700 MHz Guard Bands Auctions Closes: Winning Bidders Announced," *Public Notice*, 16 FCC Rcd 4590 (WTB 2001).

<sup>59</sup> Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Memorandum Opinion and Order*, 16 FCC Rcd 1239 (2001). Service rules were amended in 2007, but no changes were made to small business size categories. See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03-264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules, WT Docket No. 06-169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 8064 (2007).

<sup>60</sup> See "Auction of Licenses for 747-762 and 777-792 MHz Bands (Auction No. 31) Is Rescheduled," *Public Notice*, 16 FCC Rcd 13079 (WTB 2003).

<sup>61</sup> See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, 17 FCC Rcd 1022 (2002).

<sup>62</sup> *Id.* at 1087-88 ¶ 172.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 1088 ¶ 173.

<sup>65</sup> See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999.

September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.<sup>66</sup> A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 CMA licenses.<sup>67</sup> Seventeen winning bidders claimed small or very small business status and won sixty licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.<sup>68</sup>

**D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

24. The only reporting or recordkeeping costs to be incurred are administrative costs to ensure that an entity's practices are in compliance with the rule. The only compliance requirement is that CMRS carriers must provide automatic roaming to any requesting technologically compatible CMRS carrier outside of the requesting CMRS carrier's home market on reasonable and non-discriminatory terms and conditions. This rule applies to CMRS carriers that offer real-time, two-way switched voice or data service over digital network that is interconnected with the public switched network and utilize an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls.<sup>69</sup>

**E. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered**

25. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>70</sup>

26. In this *Report and Order*, the Commission clarifies that automatic roaming is a common carrier obligation for CMRS carriers, requiring them to provide roaming services to other carriers upon reasonable request and on a just, reasonable, and non-discriminatory basis pursuant to Sections 201 and 202 of the Communications Act. In adopting this rule, the Commission determined that when a reasonable request is made by a technologically compatible CMRS carrier, a host CMRS carrier must provide automatic roaming to the requesting carrier outside of the requesting carrier's home market, consistent with the protections of Sections 201 and 202 of the Communications Act.

27. In the *Report and Order*, the Commission finds that the scope of automatic roaming services includes only services offered by CMRS carriers that are real-time, two-way switched voice or data services that are interconnected with the public switched network and utilize an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. In addition, the Commission determines that it would serve the public interest to extend automatic roaming obligation to push-to-talk and text messaging (SMS). However, the Commission declines to

<sup>66</sup> See "Lower 700 MHz Band Auction Closes," *Public Notice*, 17 FCC Rcd 17272 (WTB 2002).

<sup>67</sup> See "Lower 700 MHz Band Auction Closes," *Public Notice*, 18 FCC Rcd 11873 (WTB 2003).

<sup>68</sup> *Id.*

<sup>69</sup> See *Report and Order*, *supra*, ¶¶ 28-29.

<sup>70</sup> See 5 U.S.C. § 603(c).

adopt a rule extending the automatic roaming obligation beyond that to offerings that do not fall within the scope of the automatic roaming services' definition, such as non-interconnected services or features or services that are classified as information services or to services that are not CMRS.<sup>71</sup>

28. In response to the *Reexamination NPRM*, some of the commenters requested that the Commission cap the rates that a carrier may charge other carriers for automatic roaming service based on some benchmark of retail rates.<sup>72</sup> Some of these commenters have also submitted economic analyses in support of their proposals.<sup>73</sup> Other commenters oppose any rate regulation and, in turn, have submitted their own economic analyses disputing the theory and evidence used to justify the imposition of rate regulation.<sup>74</sup> In the *Report and Order*, the Commission declines to impose a price cap or any other form of rate regulation on the fees carriers pay each other when one carrier's customer roams on another carrier's network. The Commission believes that the rates individual carriers pay for automatic roaming services should be determined in the marketplace through negotiations between the carriers, subject to the statutory requirement that any rates charged be reasonable and non-discriminatory.

29. The Commission reiterates that the general policy regarding CMRS services is to allow competitive market forces, rather than regulations, to promote the development of wireless services. On balance, taking into consideration the concerns raised in the record by certain CMRS carriers<sup>75</sup> and its preference for allowing competitive market forces to govern rate and rate structures for wireless services, the Commission expressly declines to impose any corresponding rate regulation of automatic roaming services.

30. In the *Reexamination NPRM*, the Commission sought comment on whether a carrier should be required to enter into an automatic roaming arrangement on a nondiscriminatory basis with a facilities-based-competitor in the same market. In the *Report and Order*, the Commission determines that the automatic roaming obligation does not include an in-market or home roaming requirement. The Commission finds that an automatic roaming request in the home area of a requesting CMRS carrier, the area where the requesting CMRS carrier has the spectrum to compete directly with the would-be host carrier, does not serve public interest goals of encouraging facilities-based service and supporting consumer expectations of seamless coverage when traveling outside the home area.

31. In the *Reexamination NPRM*, the Commission sought comment on access to push-to-talk,

<sup>71</sup> Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks, *Declaratory Ruling*, FCC No. 07-30, ¶¶ 11-12 (rel. Mar. 23, 2007) ("*Wireless Broadband Internet Access Declaratory Ruling*").

<sup>72</sup> See Leap Comments at 17, 19-20 (recommending that, in geographic areas where there are three or fewer facilities-based carriers from which the carrier seeking automatic roaming service could obtain such service, the Commission prohibit a facilities-based carrier from charging rates for automatic roaming that exceed the carrier's average retail revenue per minute for that area). See also SouthernLINC Comments at 49 (proposing that the Commission establish a presumption that a carrier's roaming rates in a region are unreasonable if they exceed the lowest prevailing per-minute retail rates that it charges its own subscribers in that region).

<sup>73</sup> See, e.g., Leap Comments, Attachment A (ERS Group, *Wholesale Pricing Methods of Nationwide Carriers Providing Commercial Mobile Radio Services: An Economic Analysis*); SouthernLINC Comments, Attachment B (R. Preston McAfee, *The Economics of Wholesale Roaming in CMRS Markets*); SouthernLINC Reply Comments, Attachment B (R. Preston McAfee, *The Economics of Wholesale Roaming in CMRS Markets: Reply Comments*); Leap Reply Comments, Attachment A (David S. Sibley, *The Existence of Regional, Technology-Specific Wholesale Antitrust Markets for Roaming Services*); Leap Reply Comments, Attachment B (ERS Group, *A Further Analysis of the Wholesale Pricing Methods of Nationwide Carriers Providing Commercial Mobile Radio Service*).

<sup>74</sup> See, e.g., Rosston/Sprint Nextel Comments; Rosston/Sprint Nextel Reply Comments; Hazlett/Cingular Reply Comments; Furchtgott-Roth/T-Mobile Reply Comments.

<sup>75</sup> See, e.g., Cingular Comments at i, 18-30; NDNC Comments at 3; Nextel Partners Comments at 5-6.

dispatch, or other data roaming. Some carriers advocate that the Commission should adopt an automatic roaming rule that requires carriers to permit roaming access to all technical features of their systems, and/or require carriers to make the same features accessible to all of their roaming partners (e.g., push-to-talk, dispatch, text messaging (SMS) or other data roaming services). Based on the record, in the *Report and Order*, the Commission finds that it would serve public interest to extend automatic roaming obligations to push-to-talk and SMS. However, the Commission declines to adopt a rule extending the automatic roaming obligation beyond that to offerings that do not fall within the scope of the automatic roaming services' definition, such as non-interconnected services or features. With respect to push-to-talk and SMS, the Commission finds that such offerings are typically bundled as a feature on the handset with other CMRS services, such as real-time, two-way switched mobile voice or data, which are interconnected with the public switched network. Thus, consumers consider push-to-talk and SMS as features that are typically offered as adjuncts to basic voice services, and expect the same seamless connectivity with respect to these features and capabilities as they travel outside their home network service areas.

32. With respect to non-interconnected data service, the Commission finds that it is not in the public interest at this time to impose an automatic roaming obligation. In the absence of a clear showing in the record that it would serve the public interest, the Commission believes that open access to the non-interconnected features of a competitor's network might undercut incentives to differentiate products and could chill innovation. It may also adversely affect business decisions to build out facilities for facilities-based competition and reduce the incentives to access the spectrum through other means such as initial spectrum licensing or secondary markets. For these reasons, the Commission declines to impose an automatic roaming requirement on non-interconnected features, such as stand alone dispatch, at this time.

33. In the *Report and Order*, the Commission also declines to impose an affirmative obligation on CMRS carriers to post their roaming rates. The Commission notes that roaming agreements are generally confidential and filing them would impose administrative costs on the carriers. In light of the adoption of an automatic roaming rule, the Commission finds that the available remedies for redress are sufficient to address disputes that may arise. Therefore, the Commission finds it unnecessary to burden CMRS carriers by requiring them to file roaming agreements.

#### **F. Report to Congress**

34. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.<sup>76</sup> In addition, the Commission will send a copy of the *Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order* and the FRFA (or summaries thereof) will also be published in the Federal Register.<sup>77</sup>

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<sup>76</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>77</sup> See 5 U.S.C. § 604(b).

## APPENDIX D

## Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (the "RFA"),<sup>1</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact of the policies and rules proposed in the *Further Notice of Proposed Rulemaking* ("Further Notice") on a substantial number of small entities. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Further Notice* provided in the item. The Commission will send a copy of the *Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration ("SBA").<sup>2</sup> In addition, the *Further Notice* and IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

**A. Need for, and Objectives of, the Proposed Rules**

2. Building on the decisions made in the *Report and Order*, the *Further Notice* encompasses issues concerning the applicability of the automatic roaming obligation for all wireless providers. In the *Report and Order*, the Commission clarifies that the automatic roaming is a common carrier obligation and adopts an automatic roaming rule that is applicable to services offered by CMRS carriers that are real-time, two-way switched voice or data services that are interconnected with the public switched network, and to push-to-talk and text messaging service.<sup>4</sup> Recognizing wireless subscribers' increasing reliance on mobile telephony services, especially the growing demand of data services by consumers, the *Further Notice* seeks comment on whether the Commission should extend the applicability of the automatic roaming requirements to non-interconnected services or features, including services that have been classified as information services, such as wireless broadband Internet access service, or other non-CMRS services. The *Further Notice* further seeks comment on the implications of extending the automatic roaming obligation in this manner. The Commission's primary objective in this proceeding is to facilitate seamless wireless communications for consumers, even when they are outside of the coverage area of their own service providers.

3. In the *Further Notice*, the Commission notes that while a few CMRS providers have requested that the Commission require automatic roaming for all services, including non-interconnected data services provided over enhanced digital networks,<sup>5</sup> other CMRS providers, including several small carriers, are against imposing automatic roaming rules for enhanced data services, arguing that forced roaming would thwart market forces by benefiting only those providers that have opted to invest less on their systems.<sup>6</sup> Given these contradictory positions, the *Further Notice* seeks comments on what is the appropriate balance to be drawn between providing seamless service accessibility to end-users, and allowing service providers to gain competitive advantages from their investments and innovations.

**B. Legal Basis**

4. The authority for the actions taken in this *Further Notice* is contained in Sections 1, 4(i),

<sup>1</sup> The RFA, see 5 U.S.C. §§ 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> See 5 U.S.C. § 603(a).

<sup>4</sup> See *supra* ¶¶ 2, 65-67.

<sup>5</sup> See ACS Comments at 6; MetroPCS Comments at 25 n.58.

<sup>6</sup> See e.g., EDGE Reply Comments at 1, 8-9; see also, NDNC Comments at 3 (arguing against automating roaming rules because they create a disincentive for companies to further develop their networks).

201, 202, 251(a), 253, 303(r), and 332(c)(1)(B) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201, 202, 251(a), 253, 303(r), and 332(c)(1)(B).

**C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

5. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted.<sup>7</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>8</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>9</sup> A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>10</sup>

6. In the following paragraphs, the Commission further describes and estimates the number of small entity licensees that may be affected by the rules the Commission adopts in this *Report and Order*. The Commission's finding that automatic roaming is a common carrier service subject to protections outlined in sections 201, 202 and 208 of the Act affects all CMRS carriers that provide real-time, two-way switched voice or data service that are interconnected with the public switched network and utilize an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. Such carriers are obligated to provide automatic roaming. As a common carrier obligation, the automatic roaming rule does not extend to non-interconnected services/features or services that are classified as information services or to services that are not CMRS.

7. Since this *Report and Order* applies to multiple services, this FRFA analyzes the number of small entities affected on a service-by-service basis. When identifying small entities that could be affected by the Commission's new rules, this FRFA provides information that describes auctions results, including the number of small entities that were winning bidders. However, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily reflect the total number of small entities currently in a particular service. The Commission does not generally require that licensees later provide business size information, except in the context of an assignment or a transfer of control application that involves unjust enrichment issues.

8. Wireless Service Providers. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging"<sup>11</sup> and "Cellular and Other Wireless Telecommunications."<sup>12</sup> Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show

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<sup>7</sup> 5 U.S.C. § 604(a)(3).

<sup>8</sup> 5 U.S.C. § 601(6).

<sup>9</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

<sup>10</sup> 15 U.S.C. § 632.

<sup>11</sup> 13 C.F.R. § 121.201, NAICS code 517211.

<sup>12</sup> 13 C.F.R. § 121.201, NAICS code 517212.



that there were 807 firms in this category that operated for the entire year.<sup>13</sup> Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.<sup>14</sup> Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.<sup>15</sup> Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.<sup>16</sup> Thus, under this second category and size standard, the majority of firms can, again, be considered small.

9. *Cellular Licensees.* The SBA has developed a small business size standard for small businesses in the category "Cellular and Other Wireless Telecommunications."<sup>17</sup> Under that SBA category, a business is small if it has 1,500 or fewer employees.<sup>18</sup> For the census category of "Cellular and Other Wireless Telecommunications," Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.<sup>19</sup> Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.<sup>20</sup> Thus, under this category and size standard, the majority of firms can be considered small.

10. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.<sup>21</sup> For Block F, an additional small business size standard for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>22</sup> These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.<sup>23</sup> No small businesses within the

<sup>13</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517211 (issued Nov. 2005).

<sup>14</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

<sup>15</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517212 (issued Nov. 2005).

<sup>16</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

<sup>17</sup> 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517212.

<sup>18</sup> *Id.*

<sup>19</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517212 (issued Nov. 2005).

<sup>20</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

<sup>21</sup> See Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7850-7852 ¶¶ 57-60 (1996); see also 47 C.F.R. § 24.720(b).

<sup>22</sup> See Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7852 ¶ 60.

<sup>23</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the C Block auctions. A total of 93 "small" and "very small" business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.<sup>24</sup> On March 23, 1999, the Commission reaucted 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.<sup>25</sup> On January 26, 2001, the Commission completed the auction of 422 C and F PCS licenses in Auction 35.<sup>26</sup> Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

11. Narrowband Personal Communications Service. The Commission held an auction for Narrowband Personal Communications Service (PCS) licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, "small businesses" were entities with average gross revenues for the prior three calendar years of \$40 million or less.<sup>27</sup> Through these auctions, the Commission awarded a total of forty-one licenses, 11 of which were obtained by four small businesses.<sup>28</sup> To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*.<sup>29</sup> A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million.<sup>30</sup> A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million.<sup>31</sup> The SBA has approved these small business size standards.<sup>32</sup> A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (MTA and nationwide) licenses.<sup>33</sup> Three of these claimed status as a small or very small entity and won 311 licenses.

12. Specialized Mobile Radio. The Commission awards "small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to

<sup>24</sup> FCC News, "Broadband PCS, D, E and F Block Auction Closes," No. 71744 (rel. January 14, 1997).

<sup>25</sup> See "C, D, E, and F Block Broadband PCS Auction Closes," *Public Notice*, 14 FCC Rcd 6688 (WTB 1999).

<sup>26</sup> See "C and F Block Broadband PCS Auction Closes; Winning Bidders Announced," *Public Notice*, 16 FCC Rcd 2339 (2001).

<sup>27</sup> Implementation of Section 309(j) of the Communications Act – Competitive Bidding Narrowband PCS, *Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 10 FCC Rcd 175, 196 ¶ 46 (1994).

<sup>28</sup> See "Announcing the High Bidders in the Auction of ten Nationwide Narrowband PCS Licenses, Winning Bids Total \$617,006,674," *Public Notice*, PNWL 94-004 (rel. Aug. 2, 1994); "Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total \$490,901,787," *Public Notice*, PNWL 94-27 (rel. Nov. 9, 1994).

<sup>29</sup> Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, *Second Report and Order and Second Further Notice of Proposed Rule Making*, 15 FCC Rcd 10456, 10476 ¶ 40 (2000).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

<sup>33</sup> See "Narrowband PCS Auction Closes," *Public Notice*, 16 FCC Rcd 18663 (WTB 2001).